

REMARKS

The present invention relates to a method for classifying and counting leukocytes. This includes, in accordance with claim 1, step (3), “obtaining scattered light peak intensities and scattered light widths of the respective cells” and, per step (4), “.....classifying the cells into a first group and a second group based on the scattered light peak intensities and the scattered light widths, the first group including leukocytes and the second group including coincidence cells and platelet clumps”.

In the Office Action of December 20, 2007, the Examiner has indicated that claims 1 - 3 and 6 - 10 are rejected. It is appreciated that the Examiner has withdrawn the earlier -made obviousness-type double patenting rejection (at page 2 of the Office Action). The final rejection of claims 1 - 3 and 6 - 10 is based on 35 U.S.C. § 103(a) based on EP 0 844 481 A1 (Sakata et al) in view of U.S. 2001/0049091 (Thompson et al) and U.S. Patent 6,004,816 (Mizukami et al).

First regarding the foregoing, it is noted that new claims 12 and 13 were added in the Amendment filed September 19, 2007, but it appears that the Examiner has not examined those claims. Accordingly, since the present Office Action has not examined claims 12 and 13 in addition to the noted claims 1-3 and 6-10, it is respectfully submitted that the final Office Action was improper, and should be withdrawn in order to conduct a proper examination of claims 12 and 13 as well as claims 1-3 and 6-10. It is noted that claim 11 was withdrawn in view of an earlier restriction requirement, so no further action is required with respect to claim 11 at this time.

Next, Applicant turns to the analysis of the rejection of claims 1-3 and 6-10 under 35 U.S.C. §103(a) on the merits. Applicant shows, below, the failure of the cited references to disclose key features required in accordance with independent claim 1 of the present application, based on which, it is respectfully submitted, the rejection should be withdrawn, and the re-examined claims allowed forthwith.

Rejection under 35 U.S.C. § 103(a)

The present claimed method is characterized in that it is possible to differentiate leukocytes from coincidence cells and platelet clumps based on the scattered light peak intensities and the scattered light widths. Thanks to classifying the first group including leukocytes and the second group including coincidence cells and platelet clumps as recited in step (4) of the present claim 1, it is possible to clearly classify the leukocytes into mature leukocytes, leukocytes with an abnormal DNA amount, and immature leukocytes.

As described in the Background Art section of the present specification (see pages 1 - 3), the conventional measurement of leukocytes with abnormal DNA amount was time-consuming and complicated. Further, the conventional measurement of immature leukocytes was also time-consuming, and was furthermore not precise due to the influence of platelet clumps and coincidence cells.

However, the present claimed method solves such problems of the prior art, and makes it possible to rapidly and precisely measure leukocytes with an abnormal DNA amount and immature leukocytes simultaneously in a simple manner.

None of Sakata et al (EP 0 844 481), Thompson et al (US 2001/0049091), and Mizukami et al (USP 6,004,816) disclose or suggest that it is possible to differentiate leukocytes from coincidence cells and platelet clumps based on the scattered light peak intensities and the scattered light widths, as is required in accordance with steps (3) and (4) of present claim 1.

In particular, none of the cited prior art references discloses obtaining scattered light widths of the respective cells.

Further, none of the cited prior art references disclose or suggest classifying the leukocytes into mature leukocytes, leukocytes with abnormal DNA amount, and immature leukocytes.

In view of the foregoing, Applicant respectfully submits that a person of ordinary skill in the art, even with knowledge of the three cited prior art references, would not be lead to the presently claimed method of claim 1.

In view of the above, reconsideration and allowance of pending claims 1 - 3 and 6 - 10, as well as unexamined claims 12 and 13 of this application are now believed to be in order, and such actions are hereby earnestly solicited.

If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned attorney at the local Washington, D.C. telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.


Respectfully submitted,

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